

Marie Raghianti

Questions for Tom Kowalski:

- 1) Possibility of re-transfer back to Terminal Island. Should he be before or after parole hearing?
- 2) ~~Q~~ If transfer back to Ca. is accepted, can Sam Robertson still conduct the hearing or is it out of his jurisdiction? (Harry Dwyer?)
- 3) What else can I do to serve as a reminder or as further emphasis? (personal letter, etc.)
- 4) What is the date of the upcoming hearing at FCI-Phoenix? The last one was postponed because the Commission's counsel was reviewing the file. Sam Robertson wasn't at the last hearing that was postponed. Will he, in fact, conduct this hearing?

EXHIBIT

46

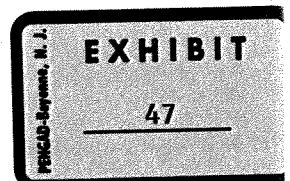
RCC0031

Mr Kowalski,

We need someone to "step up to the plate" on this one. I firmly feel that if everything in this case was the same and the prisoner's name was Rosario Stevens (only an example), then Mr. Stevens would have been released in July of 1996.

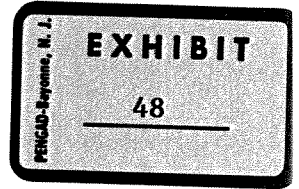
I understand the scenario of decisions based on name recognition, be it positive or negative. This man deserves to be released to return to his family after 14 years. He did the crime and he has done his time. We all deserve a second chance! I am living proof of that. Please help us achieve what is right!

With great respect and appreciation,
Roz C. Clinton
13 Feb 98



Re: Tommy G,

13 Feb 98



Mr Kowalski,

I am sending you this information on Rosario Gambino because of the great importance of his upcoming parole hearing on Wednesday, February 18, 1998. We think that Examiner Harry Dwyer will once again be conducting the hearing. As a brief reminder, and as documented, Mr. Dwyer conducted the initial parole hearing in which he recommended a ~~release~~ date of July 16, 1996. Here are some other points of emphasis. Please refer to highlighted package numbers in upper righthand corners.

- actual charge and conviction based on 980 grams (less than 1 kilo) which requires guidelines of 40-52 months and an offense severity rating of category 6. One kilo would have guidelines of 52-80 months and an OSR of category 7. Somehow, somewhere the amount was increased to 6 kilos to justify changing his OSR to category 8. Package #6
- Commission acknowledges a disparity between the guidelines set for Rosario G. and the ones set for his co-defendants, but as of yet, has not addressed the disparity issue

RCC0173

- * - Three of the four co-defendants have been released!
All defendants were tried, convicted and sentenced for the same crime and on the same charge.

Rosario G. has been a model prisoner for 14 years, and last year, through CPR, helped save the life of a fellow inmate. All of this is documented!

- One factor in the previous denial by the Commission was because he was "most likely" a member of La Cosa Nostra, which is refuted by Harry Dwyer in his review hearing summary of December 12, 1995. Package #4

A new reason for denial was then given due to conviction, in absentia and without counsel, in Italy. However, Rosario G. was tried in the United States on the same charge and was ~~acquitted~~! The Commission then returned to its earlier thinking, with slight word changes that Rosario "operated in a manner of a close-knit family," despite its own documentation refuting that claim.

- We feel that the last Commission Action Report ended in a blatant example of discrimination! #5

- Rosario G. when released will still be under a Twenty (20) year special probation, and if released now would make him almost 75 years old upon completion of that probationary period.
 - If requested or required by the US Parole Commission Rosario G. would relocate himself and his family to another city or country.
 - As documented by copies of pages from the Sicilian phone book, Gambino is a very popular name. A large majority is unrelated to the Gambino crime family.
 - I am concerned only with the case of Rosario G., not Erasmo G. I have included the recent judgment and opinion of the US Court of Appeals for the Third Circuit to refer to when appropriately related to Rosario's case. As you can see, the court's decision is based on an appeal by Erasmo G. which is not of concern to me.
- Please place special emphasis on packages 1 + 2, with #1 being the most up to date. We attempted

MEMORANDUM FOR THE FILE

From: Marie F. Ragghianti
Chief of Staff

CONFIDENTIAL

Date: September 14, 1998

Re: Rosario Gambino Case

On Friday, September 11, 1998, I was notified by General Counsel Stover that the FBI had visited this office the week of August 31st in order to review the above-named file. When asked why he had not informed the chief of staff, he indicated that it was not that unusual for the FBI to come to review a file. Mr. Stover indicated to me that the investigation was out of the FBI west coast offices, and that it appeared that Gambino might be involved in on-going drug-selling activity from prison.

Subsequently, two investigators visited USPC offices, and interviewed Mr. Stover, myself & Mr. Kowalski (in that order). The reason Mr. Kowalski & I were interviewed had to do with the fact that we had both spoken with Roger Clinton in recent months about the case.

Mr. Clinton first contacted this office late last year, asking to speak to the Chairman. The Chairman, concerned that Mr. Clinton might be inquiring about a case, refused to take the call, and referred it to me instead. I called Mr. Clinton, not knowing why he had called. Indeed, he asked to come in without saying exactly why he was calling. I emphasized to him that if he wished to discuss a case, the Chairman could not speak to him, that as a voting member of the Commission he would be forced to recuse from a case if he did. I also indicated to him that, likewise, I would not be able to discuss any such case with the Chairman, either. Mr. Clinton indicated that he understood.

After his initial visit, both Mr. Kowalski and I wrote memoranda for the file, although we did not place the memos in the decisionmaking file. I felt that we should not place the memos in that file because a hearing examiner might wrongly infer that we thought Mr. Gambino should receive special consideration--and I felt strongly that any examiner should stick solely to the facts & merits of the case. As Mr. Kowalski & I indicated in our memos, neither of us felt that Mr. Clinton had acted inappropriately; instead, he had been courteous, and thanked us for listening.

At the beginning of our meeting, Mr. Clinton had opened by stating that he had himself served time in prison, and that as a result he was sympathetic to the plight of inmates who served an extraordinary period of time. He inquired about 2 other cases, neither of which was under USPC jurisdiction. (I recall that we referred him to the Pardon Attorney in one case, and a prison warden in the second case.)

USPC/Gambino--00922

EXHIBIT

49

I think the record should show that I felt that Mr. Stover had, in the past, been gratuitously rude to Mr. Clinton. My personal philosophy was that Mr. Clinton deserved to be treated at least courteously by this Commission, which is why I agreed to see him. Nevertheless, it seemed appropriate that I should not visit with him alone, not only because of "appearances," but because I did not really know the intricate details of reading inmate files, nor the precise legal constraints on what information might be appropriately shared with interested parties. In short, I felt that Mr. Clinton should be accorded every courtesy, but that the Commission should then proceed with the case based solely on whatever merits it might (or might not) have.

After his initial visit, Mr. Clinton called and came in 2 other times. I did not record additional memoranda on either of the subsequent visits, because he did not offer additional information, but seemed only to want to be heard. My impression was that he was concerned about the suffering of the family, and wanted them to know that somebody cared, so to speak. Both Mr. Kowalski and I were courteous, but emphasized more than once on each visit that we could not really do anything, but that we were sure the case would be reviewed fairly.

On his last visit (about 2 months ago), Mr. Clinton brought pictures of his child, a little boy of around 2 or 3, who is clearly the apple of his father's eye. I escorted Mr. Clinton to the elevator on that occasion, and reminded him once again that he should not get his hopes up. My exact words were that the only thing worse than no hope is false hope, and that I did not want him to have false hope.

Mr. Clinton has not called again.

Memorandum

Subject

Roger Clinton Phone Call

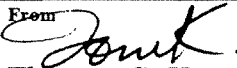
Date

October 2, 1998

To

File

From


Thomas C. Kowalski
Administrator
Case Operations
U.S. Parole Commission

Roger Clinton called this afternoon. He said he was seeking information on when Gambino would be heard because the subject has an opportunity to be transferred back to Terminal Island if he so desired. Clinton said that he did not know how to counsel the Gambino family about this decision and was calling to get some advise from me.

I advised him that the scheduling of this case would most likely occur next week and that the case would be scheduled at whatever institution he is at. I advised him that if a West Coast institution would facilitate family visits, then he should accept the transfer to Terminal Island. He said thanks - that was all he wanted and ended the call.

USPC/Gambino--00915

EXHIBIT

50

Notes on January 26, 1999 Meeting (4:35 pm)

In attendance: Chairman Gaines, Commissioner Reilly, Commissioner Simpson, Chief of Staff Ragghianti, Ethics Officer Sharon Gervasoni

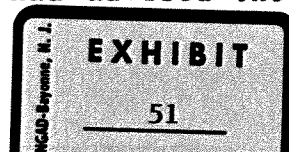
The meeting opened with Ms. Gervasoni clarifying that General Counsel Stover (who was on sick leave) had not "directed" that the meeting take place, but that he had agreed (with Ms. Ragghianti) that the meeting would be appropriate, if the Chairman wanted to call it. Ms. Ragghianti indicated that she had encouraged the Chairman to call the meeting, that she felt the issues were important enough that all Commissioners should be briefed.

Ms. Ragghianti then gave the Commissioners a brief description of recent events related to the Rosario Gambino case, and Mr. Roger Clinton's interest in the matter. Mr. Clinton's interest in the case dates back to 1996, at which time he had attempted to contact the Chairman, who referred his calls to the General Counsel. (Ms. Gervasoni & Mr. Stover had communicated with Mr. Clinton at that time.) Ms. Ragghianti reported that in December of 1997, Mr. Clinton had again attempted to contact the Chairman, who referred the matter to her. Ms. Ragghianti had then called Mr. Clinton to apologize for the fact that the Chairman was not free to call him to discuss any on-going case. Mr. Clinton then asked whether it would be okay for him to come in to discuss some matters with her. Ms. Ragghianti agreed to see him, and to provide him with a courteous ear, as she believed Commission staff respond similarly with other parties who contact us regarding cases.

When Mr. Clinton came in, Ms. Ragghianti reported that she and Mr. Kowalski had attempted to be appropriately helpful, primarily by listening courteously to his concerns. They emphasized to Mr. Clinton that they would not be free to discuss anything specific to the case with any of the Commissioners, nor to discuss details of Gambino's case with Mr. Clinton because of the Privacy Act. [Note: Mr. Clinton at the time also inquired about 2 other non-parole matters, and Mr. Kowalski referred him to appropriate agencies.] Ms. Ragghianti had told Mr. Clinton that he should not get his hopes up, but that she was sure the matter would be handled fairly. Mr. Kowalski, too, reinforced that statement. Mr. Clinton thanked them profusely for "just listening," and departed. He left some information with Mr. Kowalski, who added it to the file.)

Ms. Ragghianti reported that she and Mr. Kowalski had met again with Mr. Clinton on at least one other occasion, again here at the Commission offices. At that time, Mr. Clinton provided no new information, but made clear his continued support for Mr. Gambino and his family.

Ms. Ragghianti reported that several months ago (August/September), the FBI had come by & asked General Counsel Stover to review the Rosario Gambino file. They had also asked to interview Mr. Kowalski, and Ms. Ragghianti about Mr. Clinton's interest in the matter. Mr. Kowalski & Ms. Ragghianti had advised the FBI agents



USPC/Gambino--00867

that Mr. Clinton appeared to be motivated by a desire to help the Gambino family, whose father (Rosario Gambino) had been imprisoned for a long time.

Ms. Ragghianti stated that not long after the FBI agents came by, both she & Mr. Kowalski had received more calls from Mr. Clinton. They did not return the calls, but reported them to Mr. Stover. Not long afterward, to their chagrin, Mr. Clinton called once again, this time asking again to see the Chairman. The Chairman then discussed with Ms. Ragghianti how best to handle the matter, and Ms. Ragghianti conferred with Mr. Stover. Mr. Stover drafted a letter to be faxed to Mr. Clinton's home. Ms. Ragghianti edited the draft, and faxed it to Mr. Clinton. To her consternation, Mr. Clinton called her, apparently immediately upon receiving the faxed message (advising him that the Chairman could not meet with him, and that he should put any further inquiries in writing). Mr. Clinton's message indicated that he was embarrassed and somewhat hurt that anyone at the USPC might have thought he was asking for something inappropriate. He apologized for any possibility that he had given that impression, and asked Ms. Ragghianti to please call him. She did not.

Sometime after that, when Mr. Gambino had been heard by Hearing Examiner Robertson, Mr. Clinton evidently learned that Mr. Robertson had advised Mr. Gambino at his hearing that his recommendation was to be for a reconsideration of the Commission's original decision, and a possible reduction of time to be served. Mr. Clinton wrote & faxed a lavish letter of gratitude to the Commission. A reading of the letter suggested that he did not understand that Mr. Robertson's recommendation was only that (a recommendation), and that it was subject to review, both by other hearing examiners, as well as the Regional Commissioner. Neither Ms. Ragghianti nor Mr. Kowalski (nor anyone else with the USPC) acknowledged Mr. Clinton's letter.

Two weeks ago, while Ms. Ragghianti & Chairman Gaines were attending a Conference in Phoenix, Mr. Stover contacted Ms. Ragghianti to advise her that the FBI had contacted him again, requesting access to the Gambino file, as well as an interview with Examiner Robertson. Mr. Stover had requested the Bureau to wait until the case had been reviewed by all parties, and a final decision rendered. The FBI agreed. In the meantime, Examiner Essex had split with Examiner Robertson's recommendation, and the file had gone to Case Processing Administrator Shoquist. Regional Commissioner Simpson rendered a final decision, one which apparently differed significantly from Examiner Robertson's recommendation (but which was more consistent with the Essex & Shoquist recommendations).

Last Friday, Jackie Dalrymple, an FBI agent who had been here previously, came by to review the Gambino file, now that the decisionmaking process was over. Ironically, while she was in the Legal section of the office reviewing the file, Mr. Clinton again attempted to call both Ms. Ragghianti and Mr. Kowalski. He called

Ms. Ragghianti at 3:58 pm (ET), and Mr. Kowalski immediately afterward. On listening to her message from Mr. Clinton, and hearing Mr. Kowalski's message, Ms. Ragghianti agreed with Mr. Kowalski's belief that General Counsel Stover should be advised. She went back to advise Mr. Stover, who immediately stated that Ms. Dalrymple should be advised. Ms. Dalrymple asked to hear the 2 messages, and further requested that Ms. Ragghianti & Mr. Kowalski not delete them for a few days. (She indicated to Mr. Kowalski that she might ask both Ms. Ragghianti & Mr. Kowalski to come in on Saturday, although she did not follow up on that.)

On Monday, she came in and asked to tape record both Ms. Ragghianti's & Mr. Kowalski's messages. (Mr. Stover advised that Mr. Kowalski & Ms. Ragghianti should cooperate.)

On Tuesday (1-26-99), Ms. Dalrymple contacted Mr. Kowalski, asking whether he would agree to contact Mr. Clinton via his (Clinton's) pager, then allow any return call to Mr. Kowalski from Mr. Clinton to be taped. When Mr. Kowalski advised Ms. Ragghianti of this, her reaction was initially to question whether it was legal for any kind of recording of conversation to take place in the State of Maryland (recalling the Linda Tripp debacle related to a similar tape recording). Mr. Stover was out of the office, so Mr. Kowalski and Ms. Ragghianti located Ms. Gervasoni, who was already well-informed on most of the issues. Ms. Gervasoni at first stated that her advice would normally be for Mr. Kowalski not to return Mr. Clinton's call, but to write another letter asking for inquiries to be sent in writing. However, she felt the Mr. Stover should be called at home [he was ill], so the 3 of them (Gervasoni, Kowalski & Ragghianti) adjourned to a private office, and called Mr. Stover at home on speakerphone.

After hearing the situation, Mr. Stover stated that a similar situation had come up in the 80s, and that at that time, the USPC employee, Marie Ericson, had met with General Counsel Stover & Chairman Ben Baer, and had been advised that the decision to tape record a conversation to assist the FBI was a personal decision (not a USPC decision).

Mr. Stover stated that he felt the Marie Ericson precedent applied here, and that Mr. Kowalski should make whatever decision he felt comfortable with as a federal employee. Ms. Ragghianti inquired why the USPC would refrain from using its regular policy at this point, which might appear to be a simple letter to Mr. Clinton (without a tel. call), asking again for further requests to be put in writing. Mr. Stover again stated that this was Mr. Kowalski's decision alone to make. Ms. Ragghianti also asked why any USPC employee might be free to exercise that kind of decisionmaking in an issue so important to the functioning of the Commission.

Mr. Stover reiterated that this matter was now "bigger than the Parole Commission," and that the Commission's prerogatives were no longer the sole consideration. He said the USPC should inform Mr. Kowalski that the decision whether to return the call in

cooperation with the FBI was not one the USPC should dictate. Ms. Ragghianti expressed some apprehension that the USPC might become involved in a kind of "sting" operation (or possible entrapment) without the knowledge of the full Commission, or at least the Chairman. Mr. Stover agreed that it would be appropriate to discuss the matter with the Chairman and the 2 Commissioners.

Following Ms. Ragghianti's description of events as recounted above, Commissioner Simpson asked who the FBI is representing in their investigation; he felt that we should know that. Ms. Gervasoni was unsure, but Ms. Ragghianti stated that Mr. Stover had indicated that it was Ken Starr's investigation. Ms. Gervasoni added that Mr. Stover had said that the investigation was no longer only a USPC matter, and not limited to USPC issues. (Subsequently, Mr. Stover advised Ms. Ragghianti that he had been advised by Roger Adams [who was informed by the FBI when they visited his office] that the investigation was Ken Starr's; however, Mr. Stover stated that sometime later, he had received a call from an FBI asst. general counsel, who said that the investigation had the attention of both the FBI Director & Gen'l Counsel.)

Discussion followed about the question of Mr. Kowalski's possibly becoming involved in what resembles an FBI "sting." Ms. Ragghianti & Ms. Gervasoni reported that Mr. Stover had stated that his sense of things is that Mr. Kowalski is now acting as an "agent" for the FBI (if he agrees to cooperate in taping a conversation with Mr. Clinton). Mr. Stover also said that if we have concerns regarding questions of propriety in our employee's participation in a "sting," we should call Eric Holder. Jackie Dalrymple had asked Mr. Kowalski, and he has already indicated a willingness to help them.

Commissioner Reilly said that he felt that we shouldn't tell Mr. Kowalski what to do. There was discussion as to whether recusals from any of the Commissioners (in the Gambino case) might be necessary in the future. Ms. Gervasoni pointed out that we will soon have new Commissioners, and that presumably they wouldn't need to recuse.

Commissioner Simpson again stated that someone needs to ask Jackie Dalrymple what they're investigating. There was subsequent discussion regarding the fact that it appears at this time *not* to be related to Ken Starr. Commissioner Simpson stated that we need to call Holder if we believe it's a Starr matter.

Ms. Gervasoni expressed doubts about the D.A.G. being involved at this time. She thinks we'd be hard-pressed to explain how this [investigation] interferes with USPC business. She also stated that her impression of Holder is that he's a "stickler," "by the book" kind of person, and that we'd have to have good reason to refuse cooperation [with the FBI].

Commissioner Simpson again posed the questions: *what* are you

investigating, and *who* are you investigating, and for *whom*?

Discussion ensued regarding the fact that Mr. Stover had told Mr. Kowalski that when the FBI asks a citizen to cooperate, an explanation is owed that citizen. However, Mr. Kowalski can ask, WE can ask, but that doesn't mean they'll answer. Ms. Gervasoni pointed out that Mr. Kowalski has a legal basis to ask.

Chairman Gaines stated that Roger Clinton may have bragged to the wrong people that he had "contacts" or whatever at the Parole Commission. (The Chairman had mentioned already that while he had met Mr. Clinton in passing once or twice through the years, that the Clinton family members that he knew well were the President, his wife, and his mother, and not Roger Clinton.) General discussion also followed regarding the fact that Rosario Gambino is not the "big shot" Gambino [Carlo], although he is a relative.

There was brief general conversation regarding Ms. Ragghianti's past FBI involvement in Tennessee; she stated that she had cooperated fully with the FBI at that time, but that when asked to tape record conversations with the Governor's legal counsel, she had refused--that she was unwilling to go as far as furtively tape recording former friends & associates. Additional conversation centered around the Linda Tripp/illegal Maryland taping issues. The general consensus was that this is a different situation.

There was agreement with Commissioner Reilly's suggestion that a memo for the file should be made for the Ethics Officer. It was also agreed that Mr. Kowalski should make a memo for the file as well. (Ms. Gervasoni indicated that she had already requested that he do so.) Finally, there was general consensus that no one present should tell Mr. Kowalski what to do, that it was a personal decision that should be his alone to make.

The meeting was adjourned.

United States Postal Service

Application for Delivery of Mail Through Agent

See Privacy Act Statement on Reverse

N^o 1, Date 6/2/01

In consideration of delivery of my or our (firm) mail to the agent named below, the addressee and agent agree: (1) the addressee or the agent must not file a change of address order with the Postal Service upon termination of the agency relationship; (2) the transfer of my or our (firm) mail to another address is the responsibility of the agent; (3) all mail delivered to the agency under this authorization must be prepaid with new postage when redeposited in the mails; (4) upon request the agent must provide to the Postal Service all addresses to which the agency transfers mail; and (5) when any information required on this form changes or becomes obsolete, the addressee(s) must file a revised application with the Commercial Mail Receiving Agency (CMRA).

NOTE: The applicant must execute this form in duplicate in the presence of the agent, his or her authorized employee, or a notary public. The agent provides the original completed signed Form 1583 to the Postal Service and retains a duplicate completed signed copy at the CMRA business location. The CMRA copy of Form 1583 must at all times be available for examination by the postmaster (or designee) and the Postal Inspection Service. The addressee and the agent agree to comply with all applicable postal rules and regulations relative to delivery of mail through an agent. Failure to comply will subject the agency to withholding of mail from delivery until corrective action is taken.

This application may be subject to verification procedures by the Postal Service to confirm that the applicant resides or conducts business at the home or business address listed in boxes 8 or 11, and that the identification listed in box 9 is valid.

2. Name in Which Applicant's Mail Will Be Received for Delivery to Agent

(Complete a separate Form 1583 for EACH applicant. Spouses may complete and sign one Form 1583. Two items of valid identification apply to each spouse. Include dissimilar information for either spouse in appropriate box.)

Tommaso Gambino
Progressive Telecom
Tommaso Gambino

3. Address to Be Used for Delivery Including ZIP + 4

1015 Gayley Ave
PMB 1238
Los Angeles, CA 90024-3424

4. Applicant Authorizes Delivery to and in Care of

(Name, address, and ZIP Code of Agent)

Postal Registry
1015 Gayley Ave.
LA, CA 90024-3424

6. This Authorization Is Extended to Include Restricted Delivery Mail for the Undersigned(s)**9. Two Types of Identification are Required. One Must Contain a Photograph of the Addressee(s). Agent Must Write in Identifying Information. Subject to Verification.**

a. [Redacted]

b.

Acceptable identification includes: driver's license; armed forces, government, or recognized corporate identification card; passport or alien registration card or other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer. A photocopy of your identification may be retained by agent for verification.

5. Will This Delivery Address Be Used for Soliciting or Doing Business With the Public? (Check one)

☒ Yes ☐ No

7. Name of Applicant

Tommaso Gambino

8. Home Address (Number, street, city, state, and ZIP Code)

[Redacted]
Woodland Hills, CA

Telephone Number (818) [Redacted]**10. Name of Firm or Corporation**

Progressive Telecom

11. Business Address (Number, street, city, state and ZIP Code)

[Redacted]
Woodland Hills, CA

Telephone Number () [Redacted]**12. Kind of Business**

TELECOM

13. If Applicant is a Firm, Name Each Member Whose Mail Is to Be Delivered. (All names listed must have verifiable identification. A guardian must list the names and ages of minors receiving mail at their delivery address.)**14. If a CORPORATION, Give Names and Addresses of Its Officers**

Tommaso Gambino
[Redacted]

15. If Business Name of The Address (Corporation or Trade Name) Has Been Registered, Give Name of County and State, and Date of Registration.

CA. 1994
LA

Warning: The furnishing of false or misleading information on this form or omission of material information may result in criminal sanctions (including fines and imprisonment) and/or civil sanctions (including multiple damages and civil penalties). (18 U.S.C. 1001)

16. Signature of Agent/Notary Public**17. Signature of Applicant (If firm or corporation, application must be signed by officer. Show title)**

[Signature]



U.S. DEPARTMENT OF JUSTICE
United States Parole Commission

Office of the Chairman

5550 Friendship Boulevard
Chevy Chase, Maryland 20815-7201

Telephone: (301) 492-5990
Facsimile: (301) 492-6694

October 26, 1998

Mr. Roger Clinton
1015 Gayley Avenue
Los Angeles, CA 90024

Re: Your invitation of October 26, 1998

Dear Mr. Clinton:

The Chairman has asked me to express his sincere regrets that he cannot accept your kind invitation to meet during your trip to Washington this week. As I have mentioned before, it is agency policy that members of the Commission cannot engage in private meetings of any kind with parties having an interest in parole proceedings. This is true even if the meeting is sought for purely social reasons.

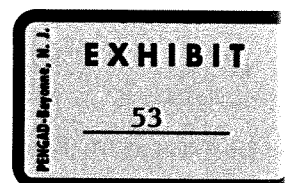
Similarly, our policy also restricts the ability of Commission staff from engaging in any continued series of calls or discussions on official matters that are not in the context of an agency proceeding. Should you have any further request, I encourage you to write us. I hope that this will not be inconvenient, and I hope that both you and your family are well.

Sincerely,

Marie F. Ragghianti *by ALV*

Marie F. Ragghianti
Chief of Staff
U.S. Parole Commission

MFR/alv
By Facsimile and Mail



USPC/Gambino--00876

17 Nov 98

To the office of the U.S. Parole Commission,

There are certain situations in almost everyone's life that require standing up for what is right, regardless of the possible consequences. It is usually easier to sit and do nothing than to stand and do something. Over the past few years, and for several reasons, this particular case became very personal with me. I felt it necessary to stand and fight for what I thought was fair. I never asked for, never expected and never received any preferential treatment. You simply treated me with respect by allowing me, through written correspondence, to express my passionate feelings regarding this case. The entire process was handled in a fair and professional manner.

At the conclusion of the hearing on Friday, October 30th, 1998, a release date was given. It is to be January 15th, 1999. I have marked that date on my calendar as a day of celebration. I will celebrate in my own private way, filled with satisfaction and pride. With your decision, I feel that justice has now been served for everyone.

With the utmost respect, appreciation and gratitude, I want to thank you from the bottom of my heart.

Sincerely, Roger Clinton

USPC/Gambino--00875

EXHIBIT

54



Memorandum

Subject

Date

Gambino, Rosario
Reg. No. 06235-050

January 13, 1999

To

National Commissioners
U.S. Parole Commission

From

John R. Simpson
John R. Simpson
Commissioner
Eastern Regional Office
U.S. Parole Commission

A. This case is referred pursuant 28 C.F.R. 2.17 (b)(3)&(4) for decision as the case has previously been designated as Original Jurisdiction based upon unusual attention and the long term sentence.

B. COMMISSIONER'S ORDER AND VOTE:

Please see previous referral memorandums from former Commissioners Jasper Clay dated March 13, 1995 and Commissioner Carol Pavilack Getty dated January 23, 1996. In addition please see pre-hearing review dated November 8, 1997 and special reconsideration hearing summary dated October 30, 1998 and addendum for a comprehensive review of this case. After having reopened this case to take yet another look at the extensive documentation concerning this prisoner, the Commission needs to resolve three issues at this juncture.

First, does the evidence justify a Category Six rating based on the amount of heroin actually sold (less than 1 kilo), or a Category Eight rating based on the existence of a conspiracy to sell 10 kilograms of heroin? I agree with the panel recommendation for a Category Eight rating.

Second, how can this outcome be reconciled with the Category Six given to Erasmo Gambino and two other codefendants? I think that the Category Six ratings in these cases were in error. I have directed that all three cases be reviewed for possible reopening. However, the Commission need not give the ringleader of a major heroin conspiracy a lower rating just because his subordinates have been rated too low.

Third, is a continuance beyond 148 months for Rosario Gambino justified? If it is, is the need to account for the seriousness of the crime our only relevant concern, or should the Commission abide by its previous determination that Gambino should not be paroled until 2007 (when he will be 65) because he is a career professional criminal who offers no basis

EXHIBIT

55

USPC/Gambino-00664

for finding that he would not resume his former activities as soon as released? I think that the Commission should adhere to its previous view. This case is best regarded as a matter involving both a serious crime and a continuing risk of return to crime.

The evidence before the Commission reveals that, during January and February of 1984, Rosario Gambino approved and directed a conspiracy between himself and his subordinates, Erasmo Gambino, Antonio Gambino, and Anthony Spatola, to obtain and sell to government undercover agents a total of 10 kilograms of heroin. A Category Eight severity rating is therefore required to adequately reflect the overall offense behavior for which this prisoner was responsible as the ringleader. (I do not find that the U.S. Attorney's Sentencing Memo adds significantly to the presentence report information already available.)

Turning to the Commission's previous finding that Mr. Gambino is a career offender, the only matter in serious dispute is whether the police surveillance reports seized from Mr. Gambino at the time of his arrest were illegally obtained, or were provided to him by his attorney as the result of discovery in another pending trial. I propose to accept Examiner Robertson's recommendation to forego reliance on this matter, but it does not warrant the Commission abandoning its well-founded view that Mr. Gambino is a professional criminal who should only be paroled when there is a reasonable possibility that effective parole supervision will force him to retire for good. His parole would not meet the criterion at 18 U.S.C. § 4206(a)(2), because it would likely jeopardize the public welfare.

I am in agreement with the recommendation to assess the offense severity as category Eight and resulting guidelines of 100+ months.

Further, my order and vote is:

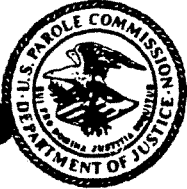
- (1) Refer to National Commissioners for decision as case previously designated as Original Jurisdiction
- (2) Continue to a presumptive parole after the service of 276 months March 14, 2007.

REASONS:

Your offense behavior continues to be rated as Category Eight severity because you sold 460 grams of heroin at 68.% purity, and then directed a conspiracy to sell 10 kilograms of heroin. In furtherance of that conspiracy, you approved an offer of 2 kilograms as immediately available, with an actual sale of one-half kilo of heroin at 73.8% purity to prove the quality of the heroin to come. Your salient factor score is 9. You have been in federal confinement as a result of your behavior for a total of 155 months. Guidelines established by the Commission indicate a range of 100+ months to be served before release for cases with good institutional adjustment and

program achievement. In addition, you have committed rescission behavior classified as administrative. Guidelines established by the Commission indicate a range of 0-8 months per drug-related infraction. You have committed 1 drug-related infraction. Your aggregate guideline range is 100+ months to be served.

After review of all relevant factors and information presented, a decision more than 48 months above the minimum guideline range continues to be warranted because you are a sophisticated professional criminal who is unlikely to abandon a career in organized narcotics trafficking if released on parole. This conclusion is supported by your leadership role in a conspiracy that was operated in the manner of an organized crime family whose methods included the deliberate cultivation of a reputation for readiness to inflict death upon those who might introduce undercover informers to it. Moreover, your approval of a guarantee to deliver 10 kilograms of heroin per month indicates that you had an established involvement with wholesale narcotics distributors. Your contention that your offense was nonetheless a one-time involvement in crime, and that you did not direct the activities of Erasmo Gambino, is inconsistent with the evidence set forth in your presentence report. The Commission finds that the record is more consistent with your having arrived at your managerial position by unsuccessful maintaining a career in the narcotics trade notwithstanding prior efforts to convict you.



U.S. Department of Justice
U.S. Parole Commission

ORDER

Name GAMBINO, ROSARIO

Register Number 06235-050

Institution FBI TERMINAL ISLAND

In the case of the above-named, the Commission has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release status is hereby ordered:

Refer to Regional Commission for
original jurisdiction consideration.

/s/ Samuel ROBERTSON

R E Cuso 12-29-98

John P. Simpson 12/30/98

Date _____

Refer to National Commissioners for decision as case
presumably designated Original Jurisdiction

John P. Simpson 1/12/99

Samuel Robertson 1/14/99

Date _____

JAN 15 1999

(Date Notice sent)

(Region-specify)

National Appeals Board _____ (check)

National Commissioners _____ (check)

Full Commission _____ (check)

U.S. Department of Justice
United States Parole Commission
5800 Friendship Boulevard
Bethesda, Maryland 20815-7201

NOTICE OF DECISION ON APPEAL

Name: Gambino, Rosario

Register Number: 06235-050

Institution: Terminal Island

The National Appeals Board examined the appeal of the above named and ordered the following:
Affirmation of the previous decision.

REASONS:

The Full Commission has reviewed the grounds you raise in your appeal and affirms the prior Commission decision.

Your first claim on appeal is that it was a violation of your due process rights for the Commission not to adopt the recommendation of the hearing examiner. You argue that since the hearing examiner who conducted the hearing recommended that the offense should be rated Category Six and that you should be paroled, that the Commission was required to adopt this recommendation or else order another hearing. You cite the district court opinion of Flores v. Stock, 715 F. Supp. 1468 (C.D. Cal. 1989).

First, your case is clearly distinguishable from the circumstances in Flores. Flores involved a parole revocation case where the credibility of the testimony of a witness was central to a finding of whether or not the alleged parole violator had violated the conditions of parole. The due process rights afforded a parolee at a revocation hearing are greater than the due process rights afforded a prisoner applying for release on parole since a person on parole has a greater liberty interest in maintaining that status. When a prisoner seeks parole, due process requires only that he be apprised of the information on which the Commission may rely and have an opportunity to refute that information, either at the parole hearing or upon administrative appeal. Roberts v. Corrothers, 812 F.2d 1173, 1179 (9th Cir. 1987). In your case, you are not on parole and the issue is not your credibility but a hearing examiner's assessment of the record and recommendation to the Commission. Applying the procedural requirement found necessary in Flores to the parole release decision-making process would transfer the parole decision-making authority to the hearing examiners at the expense of the Commissioners. The parole statute clearly vested the parole decision-making authority in the Commissioners and not the examiners and the statute was created in the context of hearing examiners conducting hearings and making recommendations to the Commissioners. See Reynolds v. McCall, 701 F.2d 810 (9th Cir. 1983); Lynch v. United States Parole Comm'n, 768 F.2d 491, 496 (2d Cir. 1985); Liberatore v. Story, 854 F.2d 830, 837-38 (6th Cir. 1988).

Second, the Commission believes that Flores was incorrectly decided and notes that Flores conflicts with the circuit court opinion of Moore v. DuBois, 848 F.2d 1115 (10th Cir. 1988), and appears to conflict with the Ninth Circuit's decision in Standlee v. Rhay, 557 F.2d 1303 (9th Cir. 1977). In Rhay, the Ninth Circuit found that a parolee was not denied due process where a key alibi witness was not present at a final revocation hearing. The Ninth Circuit stated that "parole revocation

Date: April 14, 1999

National Appeals Board

USPC/Gambino-00817

Clerk

GAM

EXHIBIT

56

eedings are not part of the criminal process and are not protected by the full panoply of due process rights." 557 F.2d at 1307. The Ninth Circuit went on to conclude that the examiner's reliance on transcripts in lieu of live testimony was appropriate and had been expressly approved by the Supreme Court citing Gagnon v. Scarpelli, 411 U.S. at 783 n. 5. The Ninth Circuit in Rhay stated "[a]t the very least, . . . [petitioner] would have to show prejudice resulting from the use of the transcript." Id. (citations omitted). You have alleged no prejudice from your claimed deprivation of your due process right to another hearing and there is none evident in the record. The issue of whether your offense should be rated Category Six or Category Seven is based on written information in the record that has been available to you prior to the most recent special reconsideration hearing. You were clearly on notice that the Commission might rate your offense Category Eight as the Commission had done so in the past and you had every opportunity to present your arguments to the Commission.

ally, it is clear to the Full Commission that the hearing examiner was applying a clear and convincing evidence standard to the information in the record rather than a preponderance of the evidence standard to determine the appropriate offense severity rating. The question to be resolved did not involve witness credibility. Rather, it was a question of the weight of the information in the record. The Full Commission can identify no substantive due process right under the circumstances of this case that would preclude additional examiners and the Commissioners from assessing the weight of the record information without requiring a pro forma additional hearing.

Your second claim on appeal challenges the Commission's finding that your offense behavior should be rated Category Eight. You argue, in addition to the argument that the hearing examiner that conducted the hearing made a contrary finding, that the decision in your case resulted in unwarranted codefendant disparity. The Full Commission has reviewed information in your file and concludes your offense was properly rated Category Eight. Assuming that the same information was presented in your codefendants' cases, then it appears that there may have been an error in their cases if they were not also rated Category Eight. The Commission may reconsider the decision in the case of Erasmo Gambino since he has not been released. (In fact, even if the appearance of disparity exists in the rating of the offense, there is no actual disparity since Erasmo Gambino has been denied parole). The Commission will not compound an error made in the cases of your codefendants by incorrectly rating your offense behavior as well. Moreover, the Full Commission is aware that your challenge to the rating of your offense in a habeas corpus petition was recently rejected by the United States District Court for the Central District of California.

The Full Commission finds that you were the most culpable of all the offenders in this conspiracy and notes that the information in your file supports the conclusions of the Commission. The information supports the conclusion that it was you that provided the assurance that 10 kilograms of heroin could be delivered.

Your claim that you did not have the ability to distribute 10 kilograms of heroin has been reviewed. You argue that the other codefendants, Anthony Spatola and Antonio Gambino, told the FBI that they could not provide that much heroin. However, the Full Commission finds that your role was significantly more culpable than these two codefendants and that you had the ability to make good on your assurances.

MEMORANDUM

TO: FILE

FROM: MICHAEL J. GAINES *Michael J. Gaines*

DATE: APRIL 9, 1999

SUBJECT: ROSARIO GAMBINO #06235-050

I recuse from voting in the above-cited case.

USPC/Gambino-00820

EXHIBIT

57

PERCUT-Exhibit, N. J.

claim that the Third Circuit on direct appeal from the conviction noted that the issue of whether the conspirators could provide additional amounts of heroin was never resolved. However, the Commission could, and has, resolved this issue.

Full Commission has reviewed the grounds you raise for a more lenient decision. The Full Commission has reviewed your institutional record including your participation in a group that counsels youthful offenders. The Full Commission concludes that the seriousness of the offense and the risk the community outweigh the mitigating factors you present.

Regarding the issues you raise in your supplement to the appeal, the Full Commission agrees with you that your rescission behavior should be rated as an administrative violation rather than an illicit drug-related infraction, but notes that it does not affect your parole guideline range. The Full Commission finds that an earlier release date is not warranted.

Your claim of a disparate presumptive release date with codefendant Erasmo Gambino is ingenuous. The Commission has not set a presumptive parole in Erasmo Gambino's case. The Commission has ordered him to continue to expiration and any release from his sentence earlier than your presumptive parole date is the result of the fact that Erasmo Gambino's sentence is longer than yours.

The Full Commission finds no merit to your claim that the decision in your case was a result of discrimination based upon national origin. A review of the record reveals that it was an error for you to have received a special reconsideration hearing. Your hearing should have been a statutory interim hearing where the question of the offense severity rating should not have been an issue. Nevertheless, the Full Commission notes that this resulted in a more favorable decision. The Commission affirms the prior Commission decision.

All decisions by the National Appeals Board on appeal are final.

Date: April 14, 1999

National Appeals Board

Clerk: p

USPC/Gambino-00819

GAMBINO.623

DEPARTMENT OF CORRECTIONS AND
NORTH EAST CORRECTIONAL CENTER
JANUARY 19, 1999

UNITED STATES PAROLE COMMISSION

Memorandum



Subject

Date

FBI Telephone Call

January 27, 1999

To

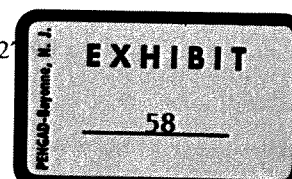
From

File

Thomas C. Kowalski
Thomas C. Kowalski
Case Operations Administrator
U.S. Parole Commission

On Tuesday, January 26, 1999, I received a telephone call from FBI Agent Jackie Dalrymple regarding a voice mail message left on my telephone from Roger Clinton. On 1/25/99, she had visited the office and recorded the message which was actually left on Friday, January 22, 1999. She asked me today if I would return the call to Mr. Clinton using his pager number and if I would allow this call to be is recorded. She also asked that an attempt be made to have him call back at an arranged time in order that the return call also is recorded. I indicated to her that I would cooperate.

USPC/Gambino--00866



PETITION FOR COMMUTATION OF SENTENCE

Print or type legibly

Relief sought: (check one)

☐ Reduction of Prison Sentence Only

☒ Reduction of Prison Sentence and Remission of Fine

☐ Remission of Fine Only

☐ Other _____

TO THE PRESIDENT OF THE UNITED STATES:

PETITIONER, ROSARIO GAMBINO, a Federal prisoner,
First Name Middle Last
Reg. No. 06235-050, confined in the Federal Institution at Terminal Island, California,

in seeking a commutation of sentence, states that he was born on ,
and has Social Security No. . (If not a United States citizen, indicate country of
citizenship: ITALY.)

PETITIONER was convicted on a plea of Not guilty in the United States District Court
guilty, not guilty, nolo contendere
for the District of New Jersey of the crime of: conspiracy
to distribute and distribution of heroin in violation of 21 U.S.C. § 846
(Describe the offense(s) of which you were convicted; provide citation of statute(s) violated, if known.)
and '841(a)(1).

involving the following circumstances: An undercover F.B.I. agent met with codefendant
(Describe accurately what you did, including your role in the offense.)
between October 1983 and March 1984, during which the agent arranged two
purchases of heroin totalling 960 grams. Based upon surveillance and
wiretap evidence, Rosario Gambino was connected to the conspiracy and
convicted of assisting the codefendants obtain the heroin provided to the
undercover agent.

and was sentenced on December 6, 1984, to imprisonment for 45 years
(length of sentence)
and/or to pay a (☒ fine ☐ restitution) of \$ 105,000 and/or to supervised release or special
(check one - do not include special assessment)
parole for 20 years and/or to probation for XXXXXXXXXXXX.
(length of sentence) (length of sentence)
My (☒ fine ☐ restitution) (☐ has ☒ has not) been paid; the balance owed is \$ \$75,000.00.

PETITIONER began the service of his sentence on December 6, 1984. He will be released
from confinement on June 2, 2010. If eligible for parole, he (☒ was ☐ will be) eligible
on March 16, 1984, and his application for parole was (☐ granted ☒ denied).

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PHOTOCOPY

EXHIBIT

59

If your conviction or sentence was appealed or otherwise challenged, complete the following paragraph:

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on April 18, 1986. A petition for a writ of certiorari (☒ was ☐ was not) sought from the Supreme Court, and (☐ granted ☒ denied) on October 6, 1986. Petitioner (☒ did ☐ did not) challenge his conviction or sentence under 28 U.S.C. §2255 (habeas corpus). (Provide citations

to court opinions, if known: Direct Appeal U.S. v. Gambino, 788 F.2d 938 (3d Cir. 1986) cert. denied 479 U.S. 825 (1986);
2255 Appeal U.S. V. Gambino, 864 F.2d 1064 (3d Cir. 1988) cert. denied

In this paragraph, list every arrest, either as a juvenile or an adult, whether or not resulting in a conviction. For each incident list date, nature of offense charged, law enforcement authority involved, location, and disposition, if known. 492 U.S. (19

PETITIONER'S criminal record, other than the instant offense, is as follows:

SEE ATTACHED EXCERPT FROM PETITIONER'S PRESENTENCE INVESTIGATION REPORT

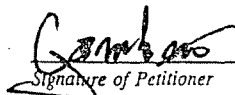
PETITIONER respectfully prays that he be granted clemency for the following reasons:

SEE ATTACHED BRIEF IN SUPPORT OF PETITION FOR COMMUTATION OF SENTENCE

The statements contained herein are true to the best of my knowledge and belief, and I understand that any misstatements of material fact contained herein may subject me to criminal prosecution and/or cause adverse action on my petition for executive clemency.

November, 2000

Date


Signature of Petitioner

If space is insufficient, additional pages may be added. Letters and/or other supporting material may be submitted with petition.

CLINICAL PHOTOGRAPHY

IN THE MATTER OF
THE PETITION FOR COMMUTATION OF SENTENCE
BY INMATE ROSARIO GAMBINO, Reg. No. 06235-050

I.

Introduction

Petitioner ROSARIO GAMBINO ("Petitioner") was sentenced to a 45 year term of imprisonment by the United States District Court for the District of New Jersey on December 6, 1984, based upon his conviction for involvement in a conspiracy to distribute slightly less than 1 kilogram of heroin in late 1983 and early 1984. Under applicable parole laws, Petitioner became eligible for parole after service of 10 years of his sentence. His four coconspirators received sentences ranging from 15-35 years of imprisonment, and have now **all** been paroled. The most recent parole was that of ERASMO GAMBINO, which occurred only after an order by the United States District Court for the District of New Jersey was issued when it granted a writ of habeas corpus to remedy illegal conduct by the United States Parole Commission, (hereinafter "Parole Commission" or "Commission"), in the case entitled Erasmio Gambino v. E.W. Morris, Civil 95-4559, in the District of New Jersey, Newark Division.

Petitioner, an exemplary prisoner who has served more than 16 ½ years of his sentence, now seeks a commutation of his sentence in the interests of justice and

fairness.

II.

Procedural History

1. Initial Parole Hearing.

Pursuant to 18 U.S.C. § 4205(a), Petitioner had his initial parole hearing on February 16, 1995. At the conclusion of that hearing, the U.S. Parole Commission Hearing Examiner who conducted that hearing recommended that Petitioner be granted a parole date in July 1996, after service of 12 years, 4 months.¹ While he erroneously rated Petitioner's offense severity rating at Category 8, he still believed that Petitioner was suitable for parole. This was based upon his **in-person** interview with Petitioner and his assessment of the fact that Petitioner was a very good parole risk.

However, that recommendation was rejected by the full Commission, which issued a notice of action denying parole on April 4, 1995. After several level of administrative appeal, which included a **de novo** hearing,² the United States Parole

¹ If Petitioner had been parole as originally recommended in 1996, he would have been processed under the old Immigration and Naturalization Service laws and regulations, which would have included bail and judicial review of any decision. Those laws have since been amended and are much more harsh.

² The purpose of the "**de novo**" hearing was to determine if there was evidence that Petitioner was a member of "organized crime." After the hearing the examiner rejected the "organized crime" finding based upon lack of evidence.

Commission issued a final notice of action on July 12, 1996, denying parole and putting the case off for reconsideration in the year **2010**. The Commission's records reflect that after each hearing or appeal review a new reason for denial of parole was constructed, as the previous reasons were insufficient under the Commission's own regulations, or were considered in violation of the Commission's own regulations.

Petitioner filed a petition for writ of habeas corpus challenging the Commission's action in the United States District Court for the Central District of California in May 1997. Petitioner argued, among other claims, that setting his offense severity rating at Category 8 - the highest Commission severity level, was not supported by the evidence and inconsistent with the Commission's actions in the cases of Petitioner's codefendants, where the offense severity ratings had been set at Category 6 or 7. In fact, by its own assessment, the Parole Commission had previously concluded that Petitioner was involved in a heroin distribution conspiracy "headed by you and Erasmo Gambino...."³ Despite this assessment, the Commission set Petitioner's offense severity rating at Category 8, while setting the co-leader Erasmo's rating at Category 6. This disparate offense severity rating of Category 8 resulted in a guideline range of 100+ months instead of 40-52 months for a Category 6 rating. Noteworthy is the fact

³ This is set forth in the Commission's Notice of Action on Appeal dated July 12, 1996.

that based upon the filing of the writ the Commission reviewed the claim of disparity in the ratings of the codefendants and concluded that Petitioner's claim was "true." [See, the Memorandum from Commission attorney Richard K. Preseton to Commissioner John R. Simpson dated September 19, 1997, attached hereto.] Nevertheless, notwithstanding the assessment of a similar leadership role, and the conclusion that there was an unexplainable inconsistency in the offense severity ratings of the codefendants, the Commission, through its attorneys, continued to assert that Petitioner should be rated Category 8.

Petitioner is imprisoned at the Federal Correctional Institution at Terminal Island, California, which is located within the Ninth Circuit, and subject to a very limited judicial scope of review of the Commission's actions under the decision in Wallace v. Christensen, 802 F.2d 1539 (9th Cir. 1986)(en banc). His writ petition was denied by the district court in California on March 23, 1999, and that opinion was affirmed by the Ninth Circuit in an unpublished memorandum decision issued on April 18, 2000.

In contrast, when codefendant Erasmo Gambino, (the "co-leader" of the conspiracy pursuant to the Commission's own assessment), who was serving his sentence in a federal prison in New Jersey, challenged the Commission's denial of parole in his case, the more expansive standard of review utilized by the Third Circuit resulted in the decision in Gambino v. Morris, 134 F.3d 156 (3d Cir. 1998), and after

the remand, the district court in New Jersey ordered Erasmo's immediate release on parole. See, Erasmo Gambino v. E.W. Morris, Civil 95-4559 (D. New Jersey April 11, 2000).

2. Interim Parole Hearing.

During the pendency of the habeas proceeding, Petitioner was provided an interim hearing, which was converted into a special reconsideration hearing at the recommendation of Commission Hearing Examiner Samuel Robertson. After presiding over two lengthy hearings in May and October 1998, during which he personally questioned Petitioner about the facts of the case, Examiner Robertson prepared and presented a recommendation to the Commission that the offense severity rating be set at Category 6, and that Petitioner be granted parole effective January 15, 1999. [Copies of transcripts of the October 1998 hearing are provided so that the reviewer can get an idea of the thoroughness of Examiner Robertson's review of the case.]⁴

Instead of adopting the recommendation of Mr. Robertson, a different examiner, who merely reviewed the file, and who had did not listen to the several hours of tape recordings of the two hearings conducted by Mr. Robertson in 1998, prepared a nine page "addendum" to Mr. Robertson's Hearing Summary, and recommended that the

⁴ The transcripts are rough due to the poor quality of the copies of the tape recordings provided to Petitioner.

offense severity rating be kept at Category 8. In a notice of action dated January 20, 1999, the Commission once again rejected the recommendation of its own experienced examiner, Mr. Robertson, who had conducted lengthy **in-person** interviews with Petitioner, and chose to again set the offense severity rating at Category 8, while setting a tentative parole date of March 14, 2007. An administrative appeal was submitted that thoroughly discussed the inappropriateness of overruling Examiner Robertson, and which pointed out the overwhelming evidence that supported setting the offense severity rating at Category 6 rather than Category 8.⁵ That appeal was denied by the Commission on April 14, 1999.

The Commission's Appeal Summary reveals that the Commission suddenly

⁵ It was even unclear to Examiner Robertson how the Commission had arrived at the Category 8 rating. Erasmo Gambino, who had been assessed as the "co-leader" by the Commission, was assessed at a Category 6 based upon the amount of heroin actually sold by the conspirators. In contrast, **only** Petitioner had his offense severity rating calculated based upon conversations **codefendants** had with an undercover F.B.I. agent. After a review **of the entire trial record** even the Third Circuit noted, "Left unresolved was the amount of heroin [the coconspirators] would be able to produce on a monthly basis." United States v. Gambino, 788 F.2d 938, 942 (3d Cir. 1986). While the Commission did not utilize the braggadocio of those coconspirators when calculating their offense severity rating, (i.e., the Commission did not use the "talk" against the persons who actually did the talking), nor in calculating the offense severity rating of "co-leader" Erasmo Gambino, it arbitrarily decided to use such talk in setting Petitioner's offense severity rating. While such arbitrary conduct by the Commission could be reviewed if Petitioner was imprisoned in the Third Circuit, it is not subject to review in the Ninth Circuit under Wallace v. Christensen, *supra*.

indicated a belief that "Erasmo Gambino's offense was incorrectly rated...,⁶ and believed that the offense severity rating of 6 given to Erasmo's case was an "error."⁷

In making that observation, the Commission noted:

"The Commission may reconsider the decision in the case of Erasmo Gambino since he has not been released. (In fact, even if the appearance of disparity exists in the rating of the offense, there is no actual disparity since Erasmo Gambino has been denied parole)."⁸

However, based upon the April 11, 2000, decision of the district court in New Jersey in Gambino v. Morris, *supra*, and the subsequent release of Erasmo Gambino **without an appeal by the Commission**, there is now a disparity that is quite clear.

III.

Prejudice Based Upon National Origin

In his initial habeas petition filed in May 1997, Petitioner indicated a belief that he was being denied parole based solely on the fact that his name is Gambino. During the course of Petitioner's habeas corpus proceedings he discovered an internal Commission directed to the full Commission which had been approved by the

⁶ This is contained in the Commission's "Appeal Summary" prepared by Commission staff prior to issuance of the April 14, 1999, Notice of Action on Appeal.

⁷ This is stated in the Notice of Action on Appeal dated April 14, 1999, at page 2, paragraph 3.

⁸ This is contained in the Notice of Action on Appeal, at page 2, paragraph 3.

Commission's general counsel, which concluded with the observation that:

"Gambino appears to come from an immigrant background in which family connections are simply exploited (as in the current offense) to get around the law." ⁹

While the courts in the Ninth Circuit summarily rejected Petitioner's claims of discrimination based upon his Italian national origin without holding an evidentiary hearing, the court in New Jersey handling Erasmo's similar claims did not. After full arguments, Judge Bissell noted in Erasmo's case that:

"It is readily apparent that the Parole Commission is judging Mr. Gambino on his name and on ambivalent familial associations. This Court finds that, as the Third Circuit states, those reasons are simply insufficient cause to subject Mr. Gambino to an extra 12 to 24 years of incarceration."

Judge Bissell also observed that Commission's continued to rely on conclusory evidence that was "flimsy and insufficient," and based upon that court's concern that any further remand to the Commission would result in denial of parole "based once again upon unsupportable conclusions," it ordered Erasmo's immediate release.

⁹ At the time Petitioner filed the petition in May 1997 **he had not obtained a copy of this document**. It was only released on June 27, 1997, after Petitioner filed a civil action seeking release of such documents under the Freedom of Information/Privacy Act.

IV.

Petitioner's Readiness for Release

1. Appearance Before the Commission Hearing Examiners.

During his **in person** hearings, Petitioner has expressed contrition for his criminal conduct. At both his initial hearing, and the subsequent special interim reconsideration hearings, the Commission hearing examiners who actually met with Petitioner recognized this sincerity, as they recommended parole.

2. Institutional Record.

The Petitioner has an outstanding institutional record. After recovering from illness during the first years of his incarceration, Petitioner has been a model prisoner who had actively attempted to improve himself and prepare for release into the community, such as participating in educational programs and voluntary participation in drug education programs. [Attached hereto are some of the many documents in Petitioner's prison record that establish this fact.]

As an example, when Petitioner was housed at the Federal Correctional Institution at Phoenix, Arizona, he participated in the "Insiders Group," which was a program designed to educate young juvenile offenders by placing them in contact with federal prisoners. When he was transferred back to F.C.I. Terminal Island, Petitioner contacted the prison administration at Terminal Island about starting a similar program

there, and has participated in that program at Terminal Island. Moreover, Petitioner has plans to continue his work in this regard once he is released, creating and operating such a program in the community.

On a more narrow focus, the accompanying prison records show Petitioner has worked in harmony with prison staff and administration, while also assisting other prisoners, including, in one instance, obtaining medical help for a fellow prisoner that the individual believes saved his life. He has also volunteered at the prison hospital to assist ill inmates.

Contact with officials at F.C.I. Terminal Island will confirm that Petitioner is an exemplary prisoner.¹⁰

3. Petitioner's Family Support.

Petitioner also has strong family support. During his imprisonment, Petitioner's family moved from New Jersey to California to be near him. Several of his children operate a small private pay telephone company in Los Angeles, and Petitioner will have active employment in that company upon his release.

¹⁰ In denying parole, the Commission expressed an unsupported belief that Petitioner would return to criminal activity upon release. That vague belief on the part of the Commission is contradicted by the Petitioner's exemplary record, and the fact that there has been no involvement in any criminal activity while incarcerated. As noted above, the Commission's belief appears to be rooted in prejudice against "immigrants" from Italy, rather than any facts.

V.

Conclusion

In 1995, after his initial parole hearing, the Commission examiner who conducted the hearing, and personally examined Petitioner, recommended that he be paroled effective July 1996. After his special interim parole hearings in 1998, the Commission examiner who conducted those hearings, and personally examined Petitioner, also recommended that Petitioner be paroled. The full Commission rejected both of these recommendations without seeing, or speaking with, Petitioner, based upon a procedural mind set that is highly suspect, as recognized by the April 11, 2000, decision of Judge Bissell in the case of Erasmo Gambino.

In enacting the Sentencing Reform Act of 1984, Congress sought to eliminate sentence disparities by, among other things, elimination of the United States Parole Commission. In considering this petition, Petitioner urges the reviewers to take note that the sentence Petitioner would receive **for the same offense** if sentenced under the present day Sentencing Guidelines would likely be in the range of 151-188 months,


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which Petitioner has already fully served.¹¹

Based upon the findings contained in the opinion of Judge Bissell dated April 11, 2000, the interests of justice and fairness can only be met by commutation of Petitioner's sentence to time served, and his immediate release. Furthermore, based on the fact that Petitioner has already served nearly 5 years more time than he would have had an equitable determination been made in his case, the release should be unconditional and not include any period of parole. Finally, based upon the fact that it appears Petitioner should have been paroled in July 1996, any commutation order should direct that the Immigration and Naturalization Service apply the statutes and regulations in effect in July 1996 when reviewing Petitioner's immigration status.

DATED: November 30, 2000 Respectfully submitted,



JAMES D. HENDERSON
Attorney for Petitioner
ROSARIO GAMBINO

¹¹ With a **worst** case calculation under the Sentencing Guidelines, Petitioner would have an adjusted offense level of 34, calculated as a base offense level of 30 due to the 960 grams of heroin sold (U.S.S.G. § 2D1.1) and a 4 level upward adjustment for the purported leadership role. At level 34, with a Criminal History category of I, the resulting guideline range is 151-188 months. Even assuming Petitioner would receive the upper range sentence of 188 months, a reduction of 15% for good time credits would result in service of approximately 161 months (13 years, 5 months). Petitioner has already served approximately 16 years, 8 months.

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*****
*      87 PAGES      3946 LINES      JOB  46476  1036TB      *
*      6:51 P.M. STARTED      6:53 P.M. ENDED      04/05/99      *
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*****
*      EEEEE      N  N      DDDD      *
*      E      N  N      D  D      *
*      E      NN  N      D  D      *
*      EEE      N N N      D  D      *
*      E      N  NN      D  D      *
*      E      N  N      D  D      *
*      EEEEE      N  N      DDDD      *
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